STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

| Galena Territory Utilities, Inc. | : | : | : | : |
| Petition for Issuance of Permanent and Temporary Certificates of Public Convenience and Necessity to Provide Sanitary Sewer Collection Disposal and Service to a Parcel in Unincorporated Jo-Daviess County, Illinois Pursuant to Section 8-406 of the Illinois Public Utilities Act; and for approval of a related contract. | : | : | : | 05-0452 |

ORDER

By the Commission:

I. Procedural History

On July 22, 2005 Galena Territory Utilities, Inc. ("Petitioner" or "GTU") filed with the Illinois Commerce Commission ("Commission"), a verified petition for a Certificate of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act ("Act"), to provide sanitary sewer service to a certain parcel in Jo-Daviess County, Illinois. Galena Territory Utilities currently provides water and sanitary sewer public utility service to approximately 2,058 water and 730 sewer customers in unincorporated Jo-Daviess County, Illinois, commonly known as the Galena Territory. Galena Territory Utilities is a public utility within the meaning of Section 5/3-105 of the Act, and is a wholly-owned subsidiary of Utilities, Inc., which directly or through operating subsidiaries, provides water and wastewater services to more than 280,000 customers in 17 states, including approximately 17,400 customers in Illinois.

Petitioner has been requested to provide sanitary sewer service to an existing condominium development known as Longhollow Point in an area of unincorporated Jo-Daviess County, Illinois, which is contiguous to and in the vicinity of the existing certificated area of Galena Territory Utilities. The proposed service area consists of approximately 2.95 acres and will contain no more than 71 condominium units. The Petition requests a permanent certificate of service authority from the Commission authorizing Petitioner to serve the parcel, under the standard rates, rules and regulations that Galena Territory Utilities, Inc. has in effect. A temporary certificate of service authority was issued to the Petitioner by the Commission on September 14, 2005. There are no municipalities whose corporate boundaries lie within one and one-half miles of the property.
On August 15, 2005 and December 7, 2005, pre-hearing conferences were held before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Springfield, Illinois. On April 17, 2006, an evidentiary hearing was held, and appearances were entered on behalf of GTU and Commission Staff (“Staff”). GTU presented the testimony of Steven Dihel, Regulatory Accountant for Petitioner. Staff presented the testimony of Thomas Smith, Economic Analyst for the Commission, and Michael McNally, Financial Analyst for the Commission. At the conclusion of the hearing, the record was marked “Heard and Taken.” A Proposed Order was served upon the parties. Staff did not take exception to any of the substantive findings within the Proposed Order and proposed some additional language to clarify the Commission’s findings and the factual basis for the findings. GTU indicated it had no objection to Staff’s additional clarifying language, and that the Company had agreed with Staff not to oppose the adoption of the Proposed Order. Although GTU disagreed with the legal arguments advanced by Staff in support of the penalty finding, GTU had determined any further effort required to sustain its position would not be worthwhile.

II. Applicable Statutory Authority

Section 8-406(b) of the Act provides, in relevant part:

No public utility shall begin the construction of any plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

In addition to issues surrounding the issuance of the requested certificate, Staff has also requested that a penalty be imposed upon GTU for providing service to an area prior to obtaining a certificate to serve that area. The relevant statutory provisions regarding this issue are as follows:
Section 5-202 provides that:

Any public utility, any corporation other than a public utility, or any person acting as a public utility, that violates or fails to comply with any provisions of this Act or that fails to obey, observe, or comply with any order, decision, rule, regulation, direction, or requirement, or any part or provision thereof, of the Commission, made or issued under authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, shall be subject to a civil penalty imposed in the manner provided in Section 4-203. A small public utility, as defined in subsection (b) of Section 4-502 of this Act, is subject to a civil penalty of not less than $500 nor more than $2,000 for each and every offense.

In case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense, provided, however, that the cumulative penalty for any continuing violation shall not exceed $500,000, except in the case of a small utility, as defined in subsection (b) of Section 4-502 of this Act, in which case the cumulative penalty for any continuing violation shall not exceed $35,000.

No penalties shall accrue under this provision until 15 days after the mailing of a notice to such party or parties that they are in violation of or have failed to comply with the Act or order, decision, rule, regulation, direction, or requirement of the Commission or any part or provision thereof, except that this notice provision shall not apply when the violation was intentional.

Section 4-203 provides that:

All civil penalties established under this Act shall be assessed and collected by the Commission. Except for the penalties provided under Section 2-202, civil penalties may be assessed only after notice and opportunity to be heard. In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, the gravity of the violation, and such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility in attempting to achieve compliance after notification of the violation.

III. Uncontested Issues

A. Certificate of Public Convenience and Necessity
Galena Territory Utilities’ verified Petition states that sewer service within the proposed service area had previously been provided by the Longhollow Point Owners Association, Inc. (the “Association” or “LPOA”), which represents the property owners of the condominiums and is exempt from Commission regulation as a mutual association. The waste water generated within the proposed service area had been collected by the Association and had been sent to offsite holding tanks. From these holding tanks, the waste water flow was then taken via sludge hauling trucks for disposal at a treatment plant. Over the years, the holding tanks had greatly deteriorated, and the Illinois Environmental Protection Agency had indicated this operation should be discontinued and the holding tanks should be removed as soon as possible. As a result, the Association had determined the best interests of its members would be served by undertaking to construct the necessary facilities to interconnect with Galena Territory Utilities’ existing sewer utility system.

Staff analyzed GTU’s proposal in conjunction with the requirements of 8-406(b) of the Act. Staff noted that no other utility was certificated to serve the proposed area, and that Staff was aware of no other sewer utilities that have interest or capacity to serve the proposed area. Staff analyzed the construction of the sewer system facilities and opined that GTU had properly and adequately managed the construction. It was the opinion of Staff witnesses that there was a demonstrated need for sewer service in the area, and that GTU could provide that service on a least cost basis. Staff witness McNally testified that GTU is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers, whether or not the Commission adopts Staff’s proposal to require GTU to refund a portion of the sewer construction costs. Staff therefore recommended that the Commission grant GTU’s request for a Certificate of Public Convenience and Necessity.

B. Rules and Regulations and Conditions of Service

Staff recommended that the Company be directed to update its sewer and water rules consistent with Staff Exhibit 1.2, Rules, Regulations and Conditions of Service for Sewer Operations, and Staff Exhibit 1.3, Rules, Regulations and Conditions of Service for Water Operations. The Petitioner accepted Staff’s recommendation on this matter.

IV. Contested Issues

A. Refund of Sewer Construction Costs

Staff Position:

Staff proposes that GTU immediately refund one and one-half times the annual (or 18 months of revenue) to the LPOA. (Staff Ex. 1.0, p. 13) Staff also recommends that GTU be required to use the guidelines as contained in ICC Staff Exhibit 1.2 for purposes of making
refunds to LPOA over the first ten years following the issuance of a certificate in this Docket. (Id., at 14)

Staff notes that there are basically no codified sewer rules. However, Staff is of the opinion that in the recent past the Commission has used water rules as a guideline for the regulation of sewer utilities. (Id., at 8) As a result, some sewer utilities have rules that require investment by those utilities in contributed plant.

The rationale for the refund, which results in investment in plant by a utility, is identifiable in basic ratemaking theory, under which utilities invest in assets to serve customers, operate and maintain those assets, pay taxes, and accumulate funds through the depreciation of assets in order that assets can be replaced when they are worn out. (Id., at 9) Rates are then established to provide for the recovery of the aforementioned costs, including a return on investment, from customers who are receiving service. If a utility has no investment, the basic tenets of ratemaking become open to question. Specifically, if there is no investment, then there is no opportunity to earn a return, no incentive to operate efficiently, and no assets to depreciate so that funds might be accumulated for future replacement. In the instant docket, absent the refunds advocated by Staff, the Company will have invested no funds in the plant at issue. (Id., at 11)

Since no rules have been promulgated for the expansion of sewer plant, Staff believes that the generic sewer rules developed from the Standards of Service for Water Companies (83 Ill. Adm. Code Part 600) and particularly Service to New Customers (83 Ill. Adm. Code 600.370) should be used as a guideline for sewer plant expansions. (Staff Ex. 1, p. 9) Water and sewer systems are similar and it is reasonable to apply the same rules to the two systems. In Docket No. 00-0194, the Commission stated that it has “. . . no difficulty interpreting Section 600.370(a) as also pertaining to sewer supply plant . . . .” (Order, p. 6, April 25, 2001) (Id., at 10) The Commission’s decision in this regard was challenged and was affirmed by the Third Appellate Court. (See 331 Ill. App. 3d 1030, 772 N.E.2d 390 (2002))

**GTU Position:**

GTU takes exception to Staff’s position that GTU should refund to LPOA an amount equal to 18 months revenue from operations, or $24,927, in exchange for the contribution of the constructed lift station and sewer main to GTU. GTU is of the opinion that to require this contribution would have the effect of increasing the total costs of providing service, because customers will bear the additional cost of the return, interest and taxes associated with the incremental plant investment. GTU further opines that to implement Staff’s proposal would fail to promote the public convenience, as required in Section 8-406(b), as the lift station and main only serve one customer.
GTU also is of the opinion that this proposal to apply the water main extension rule to the contribution of sewer facilities is unnecessary to promote the objectives behind the Commission’s water rule. GTU believes the main purpose of this water rule is to protect the utility and its customers from paying for substantial investments in new facilities that might not achieve expectations. This risk is not present in this situation, as the risk had already been avoided when LPOA constructed and paid for the mains necessary to connect to GTU’s system, and proposed to contribute the facilities at no cost. GTU also believes that the 10-year refund requirement used in the water rules is not needed in this case. GTU notes that the possibility of any sale of the contributed plant is extremely remote, as the nearest municipal facility is over 9 miles away. GTU further notes that these contributed plant facilities constitute a relatively small portion of GTU’s total investment in utility plant, and GTU believes that imposition of this contribution rule is unnecessary to achieve the goal of having the utility provide efficient utility service.

GTU further notes that according to the testimony, the requested refund would amount to about 40% of GTU’s annual sewer income being paid to a single customer. As GTU notes that no utility can be compelled to provide service to customers outside of its certificated area, to impose this large cost on GTU would strongly discourage any utility from entertaining future requests by isolated customers who need utility service.

**B. Assessment of a Penalty for Providing Service Prior to Certification**

**Staff Position:**

Staff is of the position that GTU was providing service to LPOA prior to its receiving a temporary certificate by the Interim Order in this Docket. (Staff Ex. 1.0, pp. 3-4) Yet, it did not request a Certificate until it filed the Petition in the instant docket on July 22, 2005. On August 8, 2005, Galena was notified in a letter from Staff counsel, Vladan Milosevic that it had been brought to Staff’s attention that Galena may have been operating as a public utility for approximately 18 months without a Certificate from the Commission. (See Staff Ex. 1.1) The letter also informed Galena that it may be subject to penalties for violating the PUA. At the status hearing on August 15, 2005, Staff made a statement into the record in which it articulated its concern about GTU serving the proposed area since May of 2004 without a Certificate and recommending that the Commission grant a Temporary Certificate. (See Tr., at 7-8) GTU received a Temporary Certificate on September 14, 2005 authorizing it to provide service in the proposed service area.

Staff recommends that the Commission impose a $1,000 penalty on GTU, pursuant to its authority under Section 5-202 and 4-203 of the PUA, for operating within the proposed service area prior to receiving a certificate of public convenience. (220 ILCS 5/5-202 and 4-203) Said operation without a certificate of public convenience and necessity was in contravention of Section 8-406 of the PUA which prohibits utilities from beginning
construction of facilities without having obtained a certificate from the Commission. (See 220 ILCS 5/8-406(b))

In making its recommendation Staff has taken into consideration the requirements of Sections 5-202 and 4-203. The notice required by Section 5-202 was provided by the letter from Staff Counsel mailed on August 8, 2005. The fifteen days during which no penalty could accrue ran from August 8 through August 23. This left the 20 days from August 24 until the Temporary Certificate was issued on September 14, 2005 for the penalty to accrue.

Section 4-502 of the Act defines a small public utility as one that “regularly provides service to fewer than 7,500 customers.” Galena currently has 2,058 water customers and 730 sewer customers, bringing it within the penalty limitations for a small utility. (Staff Ex. 1.0, p. 17)

Section 4-203 of the Act provides 4 factors for the Commission to consider when assessing a penalty: 1) the size of the business of the public utility; 2) the gravity of the violation; 3) other mitigating or aggravating factors; and 4) the good faith demonstrated in attempting to achieve compliance after notification of the violation. As discussed above, Galena is a small utility. However, GTU is the subsidiary of Utilities Inc., which is not a small utility as defined by Section 4-502 of the PUA. Utilities Inc. has 24 subsidiaries similar to Galena in Illinois, with 17,400 customers in the state. (Staff Ex. 1.0, p. 18) Utilities Inc. should be aware of the requirements of the Illinois Public Utilities Act in regard to Certificates of Public Convenience and Necessity as it has applied for and received Certificates from the Commission in the past. GTU should be expected to adhere to the requirements of the Act.

The fact that the Petitioner acknowledged its failure and brought its failure to the attention of the Commission should be considered as a mitigating factor. (Staff Ex. 1.0, p. 18) The fact that GTU received a Temporary Certificate within 37 days of receiving the notice of violation is a demonstration of good faith. (Staff Ex. 1.0, p. 18-19) Finally, the continuing nature of the violation of Section 5-202 should be considered. However, Staff recommends that because of the foregoing mitigating factors it would not be appropriate to fine the Petitioner on a daily basis. (Id.)

GTU errs in its reliance on Docket No. 02-0008 for the proposition that “neither the Commission nor Staff considered the utility’s provision of service prior to certification to be a violation of the Act” (Galena IB, p. 8). The application for a certificate of convenience and necessity which formed the basis for Docket No. 02-0008 was filed pursuant to a Settlement Agreement entered in Docket No. 00-0679. (See Commission Order, p. 2, Docket No. 02-0008 (May 22, 2002)) The Procedural History in the Order states, “The Company and Staff agreed that in light of the expedited schedule and the fact that the Company is serving the two customers in the requested certificated area, the issuance of a temporary Certificate is unnecessary.” (Id., at 1) This discussion of the procedural status of the docket is not the equivalent of a Staff position or a Commission finding in a contested matter.
In order to understand the procedural history of Docket No. 02-0008, one may review the procedural history of Docket No. 00-0679. In that docket, the City of Columbia (“City”) filed a complaint alleging that Illinois American Water Company (“IAWC”) was providing water service outside its certificated area. The parties stipulated to the facts that IAWC was providing water service to two residences which were outside of its certificated area and that the service connections for the two residences were within IAWC’s service area. The City argued that the point of usage rather than the point of connection was determinative of whether IAWC needed a certificate to serve the two residences. IAWC argued that the fact that the point of connection and metering point were within its certificated areas was determinative of whether IAWC need a certificate to provide service. The parties ultimately resolved their controversy by a Settlement Agreement which required IAWC to request a certificate of public convenience and necessity. There is no Commission Order ruling on the issue as the Order entered reflects the Settlement Agreement of the parties. It is notable though that prior to the settlement by the parties, the Administrative Law Judge (“ALJ”) had issued a Proposed Order (September 6, 2000), dismissing IAWC’s arguments and concluding that IAWC had violated Section 8-406(b) of the Public Utilities Act (“PUA”) (220 ILCS 5/8-406(b)) by providing water service to residences outside its certificated area. Staff notes that the Settlement Agreement, Briefs on Exception and Reply Briefs on Exception were not filed and at the time the Commission issued a Final Order, the issue was not contested. The Settlement Agreement reflects the same position as adopted by the ALJ in the Proposed Order. The reasoning set forth in the Proposed Order is instructive and should be applied to this docket. Staff is not aware of any other final Commission order that directly addresses the issue.

GTU also argues that the Commission has permitted utilities to provide service from a point within the existing service areas without requiring a certificate for the areas benefiting from the service. The cases relied upon by Galena are inapposite to the issues before the Commission in this proceeding.

In Will County Water Company, Docket No. 87-0353 (Dec. 22, 1987) Will County’s request for a certificate of public convenience and necessity was denied and the Commission ordered Will County to provide water service on a wholesale basis and to file appropriate rate tariffs with the Commission. At issue in that docket were both the willingness or obligation of various entities to own the distribution lines and compliance with a municipal ordinance. The resolution crafted by the Commission provided water service as needed without running afoul of the municipal ordinance. Those facts are not similar to the facts in the instant docket and no question has been raised as to legal impediments or provision of service on a wholesale basis in this docket.

Similarly in Illinois American Water Company, Docket No. 96-0494 (June 11, 1997) the Petitioner requested Commission approval of a wholesale contract. Contrary to the Company’s argument, GTU’s provision of service to LPOA is clearly distinguishable from wholesale service as was provided in those dockets.
Finally, the Petitioner argued that it would be unfair to penalize the Company based upon notice provided by a Commission employee rather than “having the notice considered as an agenda item at a public meeting of the Commission.” (Galena IB, p. 9) No legal authority is provided for this argument. Section 5-202 of the PUA does not state that the Commission must consider the notice at a public meeting. (220 ILCS 5/5-202) It simply provides for the mailing of ‘a notice’. GTU does not deny that it received a notice but seeks to impose a greater burden on the Commission than is required by statute. Given the purpose of the notice – notification of an entity that it is in violation of a rule, order, decision, or requirement of the Commission – time is of the essence in serving the notice so that the entity may bring itself into compliance immediately. The notice, after all, is not the equivalent of a finding that an entity is in violation, it simply provides the entity an opportunity to cure its violation before penalties may be assessed. In this case, although GTU was notified that it may be in violation of Section 8-406, GTU did not bring itself into compliance within the 15 days provided by statute.

No public utility may serve customers outside of its certificated area without having first received a certificate of public convenience and necessity from the Commission. None of GTU’s arguments have demonstrated that it was not a public utility providing utility service from May of 2004 until September 14, 2005, during which time it provided sewer service to LPOA without a certificate of public convenience and necessity. GTU was notified August 8, 2005 that it may be in violation of the Act and that it may be subject to penalties under Sections 5-202 and 4-203 of the Act. GTU failed to bring itself into compliance with the Act until September 14, 2005 when an Interim Order was granted in this proceeding granting it a temporary certificate of public convenience and necessity. GTU should be assessed a $1,000.00 penalty which takes into consideration Petitioner’s status as a small utility, its cooperation with Staff, the speed (37 days) with which it attained a temporary certificate, and its relationship with Utilities Inc., which is not a small utility and which should be aware of the requirements of the Public Utilities Act.

GTU Position:

GTU is of the opinion that they did not provide service prior to obtaining a certificate of service authority. GTU bases this on the fact that the construction of the new plant to extend the LPOA’s sewer facilities to a connection point with GTU’s existing certificated service area was performed by LPOA at their expense. GTU notes that the Commission has previously held, in Docket 95-0238, that LPOA, as a co-operative, did not need a certificate to provide utility service. GTU takes the position that they have only sought a certificate because LPOA desires to transfer the responsibility for maintaining and replacing the lift station and main extension to GTU, and that ownership of these facilities will not be transferred to GTU unless and until the Commission has entered a final order granting a permanent certificate of service authority to GTU.

GTU interprets prior Commission orders for the proposition that a utility may provide
service to customers at a point within its currently certificated service area even though the area benefiting from the service is located outside the certificated area.

GTU also objects to the notice of violation being given by a Staff attorney, rather than having the issuance of a notice being considered at a public meeting of the Commission. GTU is of the opinion that the power to issue a notice of a potential violation should be a matter reserved to the Commission. GTU notes that when the notice was issued by the Staff attorney, this Petition was already pending before the Commission, and based on GTU's interpretation of other dockets, GTU had no reason to know that their provision of service to LPOA was in violation of the Act.

V. Commission Analysis and Conclusion

The Commission first notes that the parties are in agreement that a Certificate of Public Convenience and Necessity should be issued to GTU to provide service to the Longhollow Point Condominiums, located in the area described in Exhibit A to the Petition. It appears that the subject property is in need of sewer services, having been informed by the Illinois EPA to cease their prior method of handling sewage, that Petitioner is well situated to handle service for the subject area, and there appear to be no municipal facilities closer than 9 miles to the subject area.

The parties are also in agreement that the Petitioner will adopt new water and sewer rules, in conformity with Staff Exhibits 1.2 and 1.3.

The two issues on which the parties have disagreement, are first whether GTU should be required to make refunds to LPOA for a portion of the contributed plant constructed by LPOA, and second, whether GTU should be fined for providing service to an area outside their certificated area prior to receiving a new certificate from the Commission.

The Commission first notes that it appears the parties are in agreement that there are no codified sewer rules in use that would aid in the determination of this matter. Staff urges the Commission to use the water rules to aid in determining this matter, as discussed in Docket 00-0194. To use the aforementioned water rules in this matter, GTU would be required to make a refund to LPOA for the contributed plant in the amount of $24,927, which GTU notes would amount to approximately 40% of the Petitioner’s annual income. Under the sewer rules that Petitioner appears to be operating under at the present time, no contribution to capital would be required. The Commission notes that upon adoption of the updated water and sewer rules, this issue should not be in question in any dockets in the future.
Staff notes that the revenue received by GTU for services rendered to LPOA would not have been considered in GTU’s most recent rate case, and therefore Staff believes that all this revenue should be available for investment in the main extension. GTU believes the testimony shows that to accept Staff’s proposal would have the negative effect of increasing the cost to provide service, and would have a chilling effect on any future requests for small expansions to serve a single or a very few customers.

The Commission, in this hopefully unique situation, is disinclined to require a contribution to capital from GTU as requested by Staff. We note that under the sewer rules in effect for GTU at the time of the construction, unlike the new rules to be adopted, no contribution is contemplated. The Commission also notes that in this situation, LPOA was under a mandate from the Illinois EPA to remedy their sewer treatment situation, which they were able to do with the assistance of GTU. The construction of the lift station and sewer main were undertaken by LPOA, and the agreement between LPOA and GTU contemplates the facilities being given to GTU upon a certificate being issued. While we recognize that GTU will be receiving these facilities at a zero cost, this does not appear to give GTU any incentive to provide sub-standard service, nor the opportunity to seek a windfall in the future. While this arrangement appears to have been structured differently than most additions to plant, with construction being handled by the customer in a service area in which the utility is not certificated, it is the hope of the Commission that this was done to ease the environmental burdens of the condominium association, and not an attempt to circumvent the Commission rules and regulations. The Commission further notes that the best time to resolve the issue of refunds is prior to the issuance of a Certificate and prior to the beginning of construction. It is unfortunate that in this case the Company agreed to provide service and that construction was begun prior to the Commission’s authorization being granted.

On the issue of a penalty to be assessed for providing service prior to certification, it appears clear to the Commission that GTU was in fact providing utility services to an area outside of the Petitioner’s certificated area of service. The Commission is also satisfied that the notice provided by Staff Attorney Milosevic was in compliance with the rules, and that this notice entitled GTU to a 15 day period in which to bring themselves into compliance. While GTU argues that a utility is entitled to provide service to a customer outside their certificated area, we agree with the position of Staff that the cases relied upon by GTU do not stand for this proposition. The Commission is also in agreement with Staff regarding the mitigating factors present in this matter, but we also note that GTU apparently provided services to LPOA for approximately 16 months prior to obtaining an interim certificate of service authority. The Commission is of the opinion that the recommended fine of $1,000.00 is appropriate in this matter.

VI. Finding and Ordering Paragraphs:
The Commission, after reviewing the entire record and being fully advised in the premises, is of the opinion and finds that:

1. (1) Galena Territory Utilities, Inc. is a public utility engaged in the business of furnishing water and sanitary sewer service to the public in portions of the State of Illinois and is a public utility within the meaning of Section 3-105 of the Public Utilities Act;

2. (2) the Commission has jurisdiction over the Petitioner and of the subject matter herein;

3. (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

4. (4) a Certificate of Public Convenience and Necessity should be issued to Petitioner for the provision of sanitary sewer service to the area described in Exhibit A to the Petition;

5. (5) Petitioner should, within 30 days after entry of this Order, file tariffs implementing Rules, Regulations and Conditions of Service substantially consistent with Staff Exhibits 1.2 and 1.3, with an effective date of not less than thirty working days after the date of filing for service rendered on and after their effective date, with individual tariff sheets corrected within that time period if necessary;

6. (6) The Commission rejects Staff’s recommendations for an initial refund and for possible future refunds of sewer construction cost; and

6. (7) Petitioner shall, pursuant to Section 5-202 of the Public Utility Act, pay a fine of $1,000, which amount shall be paid to the Illinois Commerce Commission within 30 days of the entry of this Order.

IT IS THEREFORE ORDERED that, pursuant to Section 8-406(e) of the Public Utilities Act, a Certificate of Public Convenience and Necessity is hereby granted to Galena Territory Utilities, Inc., to provide sanitary sewer service to the areas described in the attachment to the verified petition filed in this docket.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity hereinabove granted shall be the following:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
IT IS HEREBY CERTIFIED that the public convenience and necessity require that Galena Territory Utilities, Inc. provide sanitary sewer service to the area described in Exhibit A to the verified petition filed in this docket.

IT IS FURTHER ORDERED that Galena Territory Utilities, Inc. shall serve such customers under the standard rates, rules and regulations that Galena Territory Utilities, Inc. has in effect.

IT IS FURTHER ORDERED that within 30 days after entry of this Order, Galena Territory Utilities, Inc. shall file tariffs implementing Rules, Regulations and Conditions of Service substantially consistent with Staff Exhibits 1.2 and 1.3 with an effective date of not less than thirty (30) working days after the date of filing, for service rendered on and after their effective date, with individual tariff sheets to be corrected within that time period if necessary.

IT IS FURTHER ORDERED that pursuant to Section 5-202 of the Public Utilities Act, Galena Territory Utilities is hereby assessed a fine in the amount of $1,000.00, said fine to be paid by check made out to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission’s Administrative Services Division within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that Galena Territories Utilities, Inc. shall file with the Commission’s Chief Clerk a certification attesting that the Company has paid the ordered fine. Said certification is to be filed under Docket No. 05-0452, served upon the parties to this docket and a copy is to be provided to the Manager of the Commission’s Water Department within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 30th day of August, 2006

(SIGNED) CHARLES E. BOX

Chairman